

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER, State Bar No. 192083
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-5794
Facsimile: (213) 897-2804
6

7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-250

13 ELIZABETH KATHERINE HARVEY,
a.k.a. ELIZABETH KATHERINE HAVRILIAK,
14 a.k.a. ELIZABETH KATHERINE SCHUNEMAN,
a.k.a. ELIZABETH KATHERINE LINES
15 2848 Amber Drive
Camarillo, CA 93010
16

A C C U S A T I O N

17 Registered Nurse License No. 504273
Public Health Nurse Certificate No. 53602
Nurse Anesthetist Certificate No. 2570
18

Respondent.
19

20 Complainant alleges:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
23 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
24 ("Board"), Department of Consumer Affairs.

25 **Registered Nurse License No. 504273**

26 2. On or about September 23, 1994, the Board issued Registered Nurse
27 License Number 504273 to Elizabeth Katherine Harvey, also known as Elizabeth Katherine
28 Havriliak, Elizabeth Katherine Schuneman, and Elizabeth Katherine Lines ("Respondent").

1 Respondent's registered nurse license was in full force and effect at all times relevant to the
2 charges brought herein and will expire on October 31, 2010, unless renewed.

3 **Public Health Nurse Certificate No. 53602**

4 3. On or about April 13, 1995, the Board issued Public Health Nurse
5 Certificate Number 53602 to Respondent. Respondent's public health nurse certificate was in
6 full force and effect at all times relevant to the charges brought herein and will expire on October
7 31, 2010, unless renewed.

8 **Nurse Anesthetist Certificate No. 2570**

9 4. On or about November 18, 1999, the Board issued Nurse Anesthetist
10 Certificate Number 2570 to Respondent. Respondent's nurse anesthetist certificate was in full
11 force and effect at all times relevant to the charges brought herein and will expire on October 31,
12 2010, unless renewed.

13 **STATUTORY PROVISIONS**

14 5. Business and Professions Code ("Code") section 2750 provides, in part,
15 that the Board may discipline any licensee for any reason provided in Article 3 (commencing
16 with section 2750) of the Nursing Practice Act.

17 6. Code section 2761 states, in part:

18 The board may take disciplinary action against a certified or licensed
19 nurse or deny an application for a certificate or license for any of the following:

20 (a) Unprofessional conduct . . .

21 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violating of, or conspiring to violate any provision or term of this
chapter or regulations adopted pursuant to it.

23 7. Code section 2762 states, in part:

24 In addition to other acts constituting unprofessional conduct within the
25 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
for a person licensed under this chapter to do any of the following:

26 (a) Obtain or possess in violation of law, or prescribe, or except as
27 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as

28 ///

1 defined in Division 10 (commencing with Section 11000) of the Health and
2 Safety Code or any dangerous drug or dangerous device as defined in Section
3 4022.

3 (b) Use any controlled substance as defined in Division 10
4 (commencing with Section 11000) of the Health and Safety Code, or any
5 dangerous drug or dangerous device as defined in Section 4022, or alcoholic
6 beverages, to an extent or in a manner dangerous or injurious to himself or
7 herself, any other person, or the public or to the extent that such use impairs
8 his or her ability to conduct with safety to the public the practice authorized
9 by his or her license.

7

8 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
9 unintelligible entries in any hospital, patient, or other record pertaining to the
10 substances described in subdivision (a) of this section.

10 8. Code section 4060 states:

11 No person shall possess any controlled substance, except that furnished to
12 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
14 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
15 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
16 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or
17 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
18 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
19 This section shall not apply to the possession of any controlled substance by a
20 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
21 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
22 practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer.

18 Nothing in this section authorizes a certified nurse-midwife, a nurse
19 practitioner, a physician assistant, or a naturopathic doctor, to order his or
20 her own stock of dangerous drugs and devices.

20 9. Section 492 of the Code states, in part:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol
23 and drug problem assessment program under Article 5 (commencing with Section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
25 any agency established under Division 2 (commencing with Section 500) of this
26 code, or any initiative act referred to in that division, from taking disciplinary
27 action against a licensee or from denying a license for professional misconduct,
28 notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

26 10. Health and Safety Code section 11350 states, in part:

27 (a) Except as otherwise provided in this division, every person who
28 possesses (1) any controlled substance specified in subdivision (b) or (c), or
paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14),

1 (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or
2 (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any
3 controlled substance classified in Schedule III, IV, or V which is a narcotic drug,
4 unless upon the written prescription of a physician, dentist, podiatrist, or
5 veterinarian licensed to practice in this state, shall be punished by imprisonment
6 in the state prison.

7 11. Health and Safety Code section 11170 states that no person shall
8 prescribe, administer, or furnish a controlled substance for himself.

9 12. Health and Safety Code section 11173 states, in part:

10 (a) No person shall obtain or attempt to obtain controlled substances, or
11 procure or attempt to procure the administration of or prescription for
12 controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

13 COST RECOVERY

14 13. Code section 125.3 provides, in part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations
16 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 CONTROLLED SUBSTANCES AT ISSUE

19 14. "Demerol," a brand of meperidine hydrochloride, a derivative of
20 pethidine, is a Schedule II controlled substance as designated by Health and Safety Code section
21 11055, subdivision (c)(17).

22 15. "Fentanyl" is a Schedule II controlled substance as designated by Health
23 and Safety Code section 11055, subdivision (c)(8).

24 16. "Midazolam" is a Schedule IV controlled substance as designated by
25 Health and Safety Code section 11057, subdivision (d)(21).

26 RESPONDENT'S DEMEROL USE WHILE EMPLOYED BY DR. W.

27 FIRST CAUSE FOR DISCIPLINE

28 (Self-Administration of Controlled Substances)

17. Respondent is subject to disciplinary action pursuant to Code section
2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
2762, subdivision (a), in that in or about May 2004, while employed and/or on duty as a nurse

1 anesthesiologist at Dr. W.'s practice located in Camarillo, California, Respondent self-administered an
2 unknown quantity of the controlled substance Demerol without a valid prescription. The
3 circumstances are as follows:

4 a. During her pre-employment interview with Dr. W., Respondent admitted
5 that she was a recovering Demerol addict, but had "successfully eliminated" her addiction. In or
6 about May 2004, Dr. W. was concerned that Respondent had returned to her addictive use of
7 Demerol after receiving a report from registered nurse R. L. regarding her observations of
8 Respondent, including that Respondent's appearance and personal hygiene had deteriorated,
9 Respondent often appeared drowsy and was seen periodically nodding off while charting, and
10 Respondent's handwriting in the patients' charts had become illegible. Dr. W. ordered
11 Respondent to submit to a drug screening test.

12 b. On or about May 4, 2004, Respondent approached Dr. W.'s nursing
13 assistant, L. F., in the employee lunch room and attempted to converse with her about
14 vacationing in Hawaii. L. F. observed that Respondent's speech was slurred, her eyes appeared
15 glazed, her make-up, clothes, and hair were unkept, and she appeared very nervous. Respondent
16 asked L. F. if she would provide her with her urine specimen. Respondent told L. F. that she had
17 recently taken Ambien for a sleeping disorder and that Dr. W. had asked her to submit to a drug
18 screening test. Respondent also told L. F. that she was afraid Dr. W. would terminate her
19 employment if the drug test detected Ambien in her system. L. F. reluctantly agreed and
20 provided Respondent with her urine specimen. Respondent submitted L. F.'s urine specimen to
21 Dr. W for testing (the specimen was determined to be negative for controlled substances).
22 Respondent later admitted to the Division of Investigation, Department of Consumer Affairs,
23 that she did, in fact, use L. F.'s urine sample for the drug test because she had Demerol in her
24 system.

25 ///

26 ///

27 ///

28 ///

1 medications from the Pyxis under the names of her three assigned patients or under the
2 designation "911" or "on-call," without identifying the patients for whom the drugs were
3 allegedly withdrawn. Respondent also ordered Demerol for some of her patients when the drug
4 was not medically indicated. Respondent diverted various quantities of Demerol and Fentanyl
5 from the carts and maintained possession of the medications until she arrived back at her hotel
6 room. Respondent self-administered the drugs on a nightly basis by injecting them into one of
7 her arms. Further, Respondent falsely represented to MMH's administration that via her
8 authority as a nurse anesthetist, she was setting up the carts "in case of an emergency," and that
9 these "emergency carts" were commonly set up in Los Angeles area hospitals.

10 **Possession of Controlled Substances:**

11 b. In or about August 2005, Respondent possessed various quantities of the
12 controlled substances Demerol and Fentanyl, as set forth in subparagraph 19(a) above, without
13 valid prescriptions from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
14 doctor, in violation of Code section 4060.

15 **Self-Administration of Controlled Substances:**

16 c. In or about August 2005, Respondent self-administered various quantities
17 of the controlled substances Demerol and Fentanyl, as set forth in subparagraph 19 (a) above,
18 without lawful authority therefor.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Use of Controlled Substances to an Extent**
21 **or in a Manner Dangerous or Injurious to Oneself or Others)**

22 20. Respondent is subject to disciplinary action pursuant to Code section
23 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
24 2762, subdivision (b), in that in or about August 2005, while employed as a nurse anesthetist at
25 MMH, Respondent used the controlled substances Demerol and Fentanyl to an extent or in a
26 manner dangerous or injurious to herself and others, as set forth in subparagraph 19(a) above.

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(False Entries in Hospital/Patient Records)**

3 21. Respondent is subject to disciplinary action pursuant to Code section
4 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
5 2762, subdivision (e), in that in or about August 2005, while employed and on duty as a nurse
6 anesthetist at MMH, Respondent falsified or made grossly incorrect, grossly inconsistent, or
7 unintelligible entries in hospital, patient, or other records pertaining to the controlled substances
8 Demerol, Fentanyl, and Midazolam, as follows:

9 **Patient #69036:**

10 a. On August 11, 2005, the patient underwent surgery on an out-patient
11 basis. That same day, at 2117 hours, Respondent withdrew Fentanyl 100 mcg, Demerol 50 mg,
12 and Midazolam 2 mg from the Pyxis under the patient's name. In fact, the patient was
13 administered morphine during the surgery and had been issued a prescription for Vicodin for his
14 post-surgery pain. Further, Respondent documented in the Pyxis system that she wasted
15 Fentanyl 100 mcg, Demerol 50 mg, and Midazolam 2 mg as witnessed by registered nurse M. A.
16 In fact, M. A. did not witness Respondent waste the medications.

17 **Patient #58124:**

18 b. On August 11, 2005, at 1831 hours, Respondent withdrew Midazolam
19 4 mg from the Pyxis under the patient's name, but failed to document the administration or
20 wastage of the Midazolam in the hospital or patient records and otherwise account for the
21 disposition of the Midazolam 4 mg.

22 c. On August 11, 2005, at 1836 hours, Respondent withdrew Fentanyl
23 100 mcg from the Pyxis under the patient's name, but failed to document the administration or
24 wastage of the Fentanyl in the hospital or patient records and otherwise account for the
25 disposition of the Fentanyl 100 mcg.

26 d. On August 11, 2005, at 1837 hours, Respondent withdrew Demerol
27 100 mg from the Pyxis under the patient's name, but failed to document the administration or

28 ///

1 wastage of the Demerol in the hospital or patient records and otherwise account for the
2 disposition of the Demerol 100 mg.

3 e. On August 11, 2005, at 1932 hours, Respondent withdrew Demerol
4 100 mg and Fentanyl 100 mcg from the Pyxis under the patient's name, but failed to document
5 the administration or wastage of the Demerol and Fentanyl in the hospital or patient records and
6 otherwise account for the disposition of the Demerol 100 mg and Fentanyl 100 mcg.

7 f. On August 11, 2005, at 2123 hours, Respondent withdrew Fentanyl
8 100 mcg and Demerol 100 mg from the Pyxis under the patient's name when, in fact, the patient
9 died earlier that day at 1950 hours. Further, Respondent failed to document the administration or
10 wastage of the Fentanyl and Demerol in the hospital or patient records and otherwise account for
11 the disposition of the Fentanyl 100 mcg and Demerol 100 mg.

12 g. On August 12, 2005, at 1521 hours, Respondent withdrew Demerol
13 200 mg and Fentanyl 100 mcg from the Pyxis under the patient's name when, in fact, the patient
14 died on August 11, 2005, at 1950 hours. Further, Respondent failed to document the
15 administration or wastage of the Demerol and Fentanyl in the hospital or patient records and
16 otherwise account for the disposition of the Demerol 200 mg and Fentanyl 100 mcg.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct)**

19 22. Respondent has subjected her license to disciplinary action under section
20 2761, subdivision (a), in that Respondent committed acts of unprofessional conduct, as more
21 fully described in paragraphs 17 through 21, above.

22 23. Respondent has subjected her license to disciplinary action under Code
23 sections 2761, subdivision (a), and 492 on the grounds of unprofessional conduct, in that
24 Respondent violated the law, as follows:

25 a. On or about July 14, 2008, in a criminal proceeding entitled *The People of*
26 *the State of California v. Elizabeth Harvey*, in the Superior Court of California, County of
27 Monterey, Case No. CRSS080044A, Respondent plead guilty to two counts of violating Health
28 and Safety section 11350(a) (unlawful possession of a controlled substance), a felony. On July

1 15, 2008, Respondent was placed on Deferred Entry of Judgment for eighteen (18) months and
2 ordered to enter a Drug Education and Rehabilitation program.

3 b. The circumstances of the crime are set forth in paragraphs 19 through 21,
4 above. The Division of Investigation, Department of Consumer Affairs, referred the matter to
5 the Monterey County District Attorney's Office for criminal prosecution.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 504273,
10 issued to Elizabeth Katherine Harvey, also known as Elizabeth Katherine Havriliak, Elizabeth
11 Katherine Schuneman, and Elizabeth Katherine Lines;

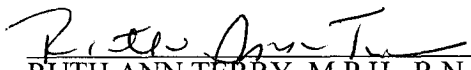
12 2. Revoking or suspending Public Health Nurse Certificate Number 53602,
13 issued to Elizabeth Katherine Harvey, also known as Elizabeth Katherine Havriliak, Elizabeth
14 Katherine Schuneman, and Elizabeth Katherine Lines;

15 3. Revoking or suspending Nurse Anesthetist Certificate Number 2570,
16 issued to Elizabeth Katherine Harvey, also known as Elizabeth Katherine Havriliak, Elizabeth
17 Katherine Schuneman, and Elizabeth Katherine Lines;

18 4. Ordering Elizabeth Katherine Harvey, also known as Elizabeth Katherine
19 Havriliak, Elizabeth Katherine Schuneman, and Elizabeth Katherine Lines, to pay the Board of
20 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
21 pursuant to Business and Professions Code section 125.3; and,

22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: 4/15/09

24 
25 RUTH ANN TERRY, M.P.H., R.N.
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California

Complainant